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Cc: []
From: CN=Karen Schwinn/OU=R9/O=USEPA/C=US
Sent: Thur 12/2/2010 7:54:13 PM
Subject: Fw: additional EPA comments on the Federal status/transition document

FYI

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----- Forwarded by Karen Schwinn/R9/USEPA/US on 12/02/2010 11:31 AM -----

From: Karen Schwinn/R9/USEPA/US
To: **CEQ email**, Letty_Belin@ios.doi.gov <Letty_Belin@ios.doi.gov>
Cc: Will.Stelle@noaa.gov <Will.Stelle@noaa.gov>, David_Nawi@ios.doi.gov, gorke.roger@epa.gov, **CEQ email**, Tom Hagler/R9/USEPA/US@EPA
Date: 12/02/2010 11:33 AM
Subject: additional EPA comments on the Federal status/transition document

Erika and Letty -

Thank you for leading Wednesday's fruitful discussion of the status/transition document. To follow up my Tuesday email, I am offering the following comments and proposed changes. If you'd like to discuss this, feel free to call. - Karen

1. "Federal agencies" versus "Federal BDCP Agencies."

EPA thinks you should revisit the approach you proposed on having all six federal agencies agree to all the conclusions about the current status of the BDCP. We believe that having the detailed conclusions about the status of the BDCP made by the Federal BDCP Agencies, rather than all six agencies, will allow DOI and Commerce to strengthen their conclusions and commitments in the discussion without causing legal and programmatic concerns for the other federal agencies.

We also think that this will allow all of us to avoid having to argue about what is and isn't "known" on some of these issues at this time. It is simply premature on some of these issues to make a conclusion "based on what we know now," given that some of the information is available only to the lead agencies and some is not available at all.

Drafting this distinction is neither difficult nor confusing. It could be done easily by first, at page one, in the second paragraph, as shown below, add a definitional parenthetical:

“A centerpiece of the Federal Interim Action Plan was reenergizing the State-Federal partnership in addressing the state’s water crisis. The most important focus of that partnership has been the development of the proposed Bay Delta Conservation Plan (BDCP). The BDCP is collaborative effort to develop a 50-year plan to achieve the twin objectives of a healthy Bay Delta and a reliable water supply for south of Delta water users. It is the keystone for achieving long-term restoration and protection of the Bay Delta ecosystem and California’s water supply system. DOI, through the Bureau of Reclamation and the Fish and Wildlife Service (FWS), and the Commerce Department, through the National Marine Fisheries Service (NMFS) (collectively, the “Federal BDCP Agencies”), are spearheading the significantly enhanced Federal engagement on the BDCP.”

And secondly, when you get down to the detailed discussion in Core Elements, beginning at unnumbered page 8, switch to using “Federal BDCP Agencies” throughout this section, as opposed to “federal agencies” or “the agencies”.

This revision would allow us to show a great deal of federal unanimity on pages 1-7, which is where most of our broad policy pronouncements occur, and still maintain the integrity of the other agencies’ regulatory programs.

If you decide not to edit along these lines, EPA would have to request that many of the statements on pages 8-10 be deleted or changed, much as the Corps' comments suggest.

2. Other recommended changes

We have additional changes that would apply regardless of what you do with #1 above.

i. We suggest deleting the paragraph and quote on the purpose and need at the top of page 8, rather than continuing the debate on this issue now . The level of detail here also seems inconsistent with the rest of the document.

ii. On the bottom of page 9, delete the one sentence, as follows:

“New North Delta Conveyance: Subject to completion of an adequate effects analysis as described above, the Federal Agencies support the development of a new conveyance facility that would move water from the north Delta to the south Delta, and believe this will provide additional operational flexibility to meet the dual goals of ecological health and water supply reliability. The agencies have identified no objections at this juncture in the planning process to the sizing and routing of the proposed new facility described in the [state’s document], except as described below. Additional analysis of the effects of the proposal on the environment, on listed species, and on humans, may identify additional issues of concern to Federal Agencies.

iii. On page 11, in the middle, add the highlighted text, which addresses the kind of issue I raised in my earlier email (where I used the Yolo Bypass as an example)

“4. Habitat Restoration: The Federal agencies generally support the multiple components of the BDCP habitat restoration program as currently conceived. Some of the concerns that we have regarding habitat restoration include: (1) that habitat restoration under the BDCP should be no less timely or substantial than the habitat restoration required by the current biological opinions; (2) habitat restoration will be phased such that substantial restoration occurs before operations of the proposed isolated facility commence, unless the agencies determine that an alternative plan for habitat restoration is preferable; (3) provision should be made in the BDCP assuring that adequate funding will be provided for habitat restoration; (4) that habitat restoration be carried out in a way that does not exacerbate water quality problems in the Delta nor interfere with Central Valley flood control programs; and that (5) the robust monitoring and adaptive management programs of the BDCP should allow for

significant revisions to habitat restoration requirements based on new data and circumstances. The agencies acknowledge that the predictability and quantification of the ecological benefits anticipated from these program elements vary across the various habitat types and across species, as recognized by the parties and others, including the National Research Council and other independent science authorities.”

3. My previous comments

I am still requesting that you make the changes I previously sent you in the description of EPA actions, towards the end of the document.

4. Delta Stewardship Council?

Finally, I note the obvious absence of any reference to the Delta Stewardship Council and its state-mandated obligation to develop a comprehensive Delta Plan by the end of 2011. This Delta Plan, which may or may not include the BDCP, will have legal status under state law. It will, because of the schedule, probably come out before the BDCP is finished. The relationship between the BDCP process and the DSC has always been interesting. I recommend taking advantage of the change in administrations to get that relationship onto a more constructive footing, and a paragraph committing to collaborating with the DSC process might be a good start.

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